

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JEFFREY LAMONT GREENE,

Petitioner,

v.

406CV257

ROBERT LEVERETT,

Respondent.

ORDER

In a 28 U.S.C. § 2254 petition, Jeffrey Lamont Greene pursued habeas relief from this Court because, he argued, he received ineffective assistance of counsel (IAC) when he pled guilty to drug and recidivism-based charges.¹ Doc. # 1 at 2. He also claimed that he was denied equal protection and suffered prosecutorial vindictiveness. *Id.* at 4-5 & attachments.

Greene failed, the Magistrate Judge (MJ) concluded in a comprehensive Report and Recommendation (R&R), to show that the state habeas court erred in denying his IAC and other claims. Doc. # 11 at 17. Thus, the MJ advised the Court to deny the petition. *Id.* In a 4/2/07 Order, The MJ warned Greene of the 4/16/07 deadline for Objecting to the R&R. Doc. # 12. Greene sought no extension of time. This Court then adopted the R&R, noting that it had received no F.R.Civ.P. 72(b) Objection from Greene. Doc. # 13.

Afterwards, Greene moved for leave to file an out-of-time Objection to the R&R. Doc. # 15. He subsequently filed a Notice of Appeal.

¹ The state "trial court accepted petitioner's guilty plea and sentenced him to a 30-year sentence, with eight years to serve on counts 1 and 5 and four years to serve on counts 2, 3, and 6, concurrent with count 1." Doc. # 11 at 2.

FILED
U.S. DISTRICT COURT
SAVANNAH DIV.

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CLERK *W. B. Smith*
SO. DIST. OF GA.

Doc. # 16. The Eleventh Circuit's attached 6/18/07 appellate docketing letter to Greene reveals that it is awaiting this Court's ruling on that motion. This Court will construe the motion as sounding under F.R.Civ.P. 59(e), which is the only way to support jurisdiction for this Court to act (normally, an NOA divests this Court of jurisdiction, *see, e.g., Mahone v. Ray*, 326 F.3d 1176, 1179 (11th Cir. 2003)).

In his motion, Greene -- who remains incarcerated and is proceeding *pro se* -- claims that he did not receive the MJ's warning Order until 4/27/07, after the 4/16/07 Objection deadline. Doc. # 15 at 1. He seems to say that he was moved between prisons and that he timely mailed in his change of address, though it appears he sent it to the U.S. Marshall service, rather than the Clerk of this Court, where it should have gone. *Id.*

The Court **GRANTS** Greene's out-of-time motion, construed as a Rule 59(e) motion, doc. # 15, and thus **VACATES** its 4/24/07 Judgment, doc. # 14. Greene must place his Rule 72(b) Objections in his prison's mail system by no later than Monday, 7/16/07. He is reminded, too, of his duty to timely inform the Clerk of this Court of any change of address.

This 25 day of June, 2007.

B. Avant Edenfield
B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

Thomas K. Kahn
Clerk

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June 18, 2007

Jeffrey Lamont Greene (499046)
Sumter County CI
346 MCMATH MILL RD
AMERICUS GA 31719-8605

Appeal Number: 07-12756-D

Case Style: Jeffrey Lamont Greene v. Warden Robert Leverett
District Court Number: 06-00257 CV-4

The referenced case has been docketed in this court. Please use the appellate docket number noted above when making inquiries.

Although trial exhibits are routinely transmitted to this court, contraband, weapons, and currency may not be sent except by court order. Also, counsel must arrange at their own expense for transportation to and from this office of oversized exhibits. [See 11th Cir. R. 11-3].

In lieu of arranging for transmittal by the district court of oversized physical exhibits, parties are encouraged to substitute photographs, diagrams, or models of lesser size and weight, or to stipulate to the nature and content of such exhibits. Exhibits retained by the district court remain a part of the record on appeal for all purposes [Fed.R.App.P. 11], and thus requests to transmit oversized exhibits are discouraged.

Attorneys who wish to participate in this appeal must be properly admitted either to the bar of this court or for this particular proceeding pursuant to 11th Cir. R. 46-1. An attorney not yet properly admitted must file an appropriate application for admission within fourteen (14) days from this date. In addition, all attorneys (except court-appointed counsel) who wish to participate in this appeal must complete and return an appearance form within (14) days from this date. Application forms and appearance forms are available on the Internet at www.ca11.uscourts.gov. The clerk may not accept **motions or other filings** from an attorney until that attorney files an appearance form. See 11th Cir. R. 46-1(e). Persons appearing pro se need not file an appearance form.

Sincerely,

THOMAS K. KAHN, Clerk

Reply To: Nancy Holbrook/wl/404-335-6183

This court awaits district court's ruling on 05/02/2007 15 MOTION to File Out of Time Response/Objection to Report and Recommendation by Jeffrey Lamont Greene.

c: District Court Clerk

DKT-1 (09-2006)